Office - Supreme Court, U. S.
FILED
FEB 21 1951
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

MONROE B. LEVOY,
Petitioner,
against
STYL-RITE OPTICAL CORPORATION

MONROE B. LEVOY,
Petitioner,
against
IDEAL OPTICAL CO., INC.

OCTOBER TERM
1950
No. 570

PETITION FOR WRIT OF CERTIORARI

EUGENE L. BONDY,
Attorney for Petitioner.

INDEX

PAGE

PETITION:

Opinions Below 1

Jurisdiction 2

Questions Presented 2

The Statute Involved 2

Statement 3

Specifications of Errors to Be Urged 5

Reasons for Granting the Writ 6

BRIEF:

Statement 7

Summary of Argument 8

Argument 8

Conclusion 11

CASES CITED

Ashley v. Weeks-Neuman Co., 220 Fed. 899, 901 10

Franklin Knitting Mills, Inc. v. Gropper Knitting Mills, Inc., 15 Fed. 2d 375; cert. den. 273 U. S. 761 8

Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corporation, decided December 4, 1950, Vol. 95, No. 3 of L. Ed. advance sheets, December 18, 1950 8

PAGE

General Talking Pictures Corp. v. Western Electric Co., Inc., 304 U. S. 175, 82 L. Ed. 1273, 58 S. C. 849 11

New York Belting and Packing Co. v. New Jersey Car Spring Co., 137 U. S. 445, 34 L. Ed. 741 11

Whitney Mfg. Co. v. Alvin Silver Co. (283 Fed. 75) .. 9

STATUTE CITED

Title 35 of the United States Code, Sections 4929 and 4933 of the Revised Statutes as amended:

Section 73 3

Supreme Court of the United States

MONROE B. LEVOY, Petitioner, *against* STYL-RITE OPTICAL CORPORATION	OCTOBER TERM 1950
MONROE B. LEVOY, Petitioner, *against* IDEAL OPTICAL CO., INC.	No. ———

PETITION FOR WRIT OF CERTIORARI

MONROE B. LEVOY, the petitioner upon both of the above entitled applications, prays that a writ of certiorari may issue to review a judgment of the United States Court of Appeals for the Second Circuit (R. 286) affirming unanimously a judgment of the United States District Court for the Eastern District of New York (R. 271).

Opinions Below

The findings of fact and conclusions of law of the District Court are printed at pages 268-270 of the record. The opinion of the District Judge, the Honorable Harold M. Kennedy, is printed beginning with page 258. It also appears in 88 F. Supp. 497. The decision of the Court of Appeals, on the opinion of the District Judge (R. 285), is reported at 185 F. 2d 240. The petitioner sued for infringement of a design patent.

Jurisdiction

The jurisdiction of this court is invoked under C. 646, 62 Stat. 928; 28 U. S. C. A. 1254, Act of June 25, 1948. The judgment of the Court of Appeals, here sought to be reviewed, is dated November 24th, 1950 and this application is therefore timely.

Questions Presented

The review which this petitioner seeks is of the law upon facts found by the Court. The questions are:

1. Does the inventive talent displayed by the petitioner in conceiving and executing the design measure up to the requirements of the statute for patent protection?

2. May a characteristic of a design which attracts the eye for its cosmetic appeal as well as for absolute beauty be considered on the question of "original and ornamental"?

3. Does an earlier design by the same inventor, for which his patent application was co-pending and which embodies important characteristics of the patent in suit, constitute an impeding prior art?

4. Is the petitioner's patent invalid for want of invention?

The Statute Involved

The questions presented involve the construction particularly of Section 73 in Title 35 of the United States Code, Sections 4929 and 4933 of the Revised Statutes as amended. The sections reads:

"§ 73. Patents for designs; how obtained; regulations applicable

Any person who has invented any new, original, and ornamental design for an article of manufacture, not known or used by others in this country before his invention thereof, and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than one year prior to his application, and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings had, the same as in cases of inventions or discoveries covered by section 31 of this title, obtain a patent therefor.

All the regulations and provisions which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provisions of this title, shall apply to patents for designs."

Statement

In these actions the petitioner sought an injunction against further infringement by Styl-Rite Optical Corporation and Ideal Optical Co., Inc. of U. S. Design Letters Patent No. 147,368 granted to him on August 26, 1947, and an accounting, damages, etc. The patent is printed opposite page 244 of the record. It refers for description to the drawings printed opposite page 245. There is no further oral description.

The object of the patent is a spectacle frame so designed as to be attractively beautiful in itself as well as to conform to the standards of beauty which cosmeticians and "beauticians" had found effective in applying their art to the female face. The result was an article of such

intrinsic beauty that (as the Court found—R. fol. 783) "many women purchased plaintiff's frame even though they did not need glasses, because of a belief that the frames were beautiful, or at least attracted attention". This was a great advantage considering that women usually resist the wearing of glasses, even when needed, because of their unflattering effect (R. fol. 774).

The petitioner considered the principle of cosmetics that the appearance of the female face is improved by having the eyes appear large and the nose foreshortened. This, he found, was accomplished by "beauticians" by plucking the lower surface and the interior ends of the eyebrows. The first of these operations make the brow appear higher and the eye larger; the second widens the space over the nose and tends to foreshorten that feature. Any object, such as a spectacle frame, partaking of these characteristics, would constitute an article of beauty when worn by a woman. The shape and ornamentation itself would be intrinsically beautiful as a concomitant.

With this purpose he designed, after much experiment (R. fol. 773) a spectacle frame which the Court described in the following words (Finding No. 1, R. p. 268):

> "* * * the principal features * * * were: (1) the application of lustrous metallic sleeves to the temple pieces of the frame, and of the same material to the upper and outer portions of the eye-pieces in such wise that plastic and lustrous material alternated, and (2) in leaving a plastic uncovered space over the bridge of the nose wider than the nosepiece itself."

The petitioner's frames "met with an instantaneous and widespread commercial success" (Finding No. 3, R. p. 269).

Plaintiff's product was "novel, ornamental and pleasing in appearance in the opinion of those engaged in the optical trade" (Finding No. 11, R. p. 270).

The defendants "wilfully and deliberately copied it, and infringed the patent, if it was valid" (Conclusion No. 1, R. p. 270). Indeed they immediately produced slavish copies (Finding No. 5, R. p. 269).

The Court concluded, however, that the patent was "invalid for want of invention" (Conclusion No. 2, R. p. 270); it lacked "the divine flash" (fol. 800, R. p. 267); besides, some earlier patents had possessed *some* of the characteristics of the design in suit and a co-pending patent of the petitioner himself (referred to as Jeweled Spec) bore a strong resemblance.

Specifications of Errors to Be Urged

The Court of Appeals erred:

1. In deciding that the invention of the spectacle frame did not involve such inventive talent as the statute requires;

2. In deciding that an earlier design of the same inventor upon which his patent application was co-pending at the time of the filing of the application at bar constituted prior art;

3. In failing to consider that the secondary beauty imparted by the conformity of the design to a cosmetic pattern tended to render the design "new, original, and ornamental";

4. In considering as prior art, with reference to the integrated beauty and pleasing combination of the design at bar, certain prior patents embodying unintegrated elements of the petitioner's designs;

5. In concluding that the petitioner's patent was invalid for lack of invention.

Reasons for Granting the Writ

1. The decision of the Court of Appeals, affirming without opinion the District Court, construes Section 73 of Title 35 of the United States Code in such manner as practically to nullify its effect.

2. The decision of the Court of Appeals is in conflict with applicable decisions of this Court.

3. The decision of the Court of Appeals presents the situation of a statute deceptively appearing to offer protection for invention.

WHEREFORE, it is respectfully submitted that this petition should be granted.

Dated: New York, N. Y.,
February 19, 1951.

MONROE B. LEVOY

By Eugene L. Bondy
Attorney for Petitioner

Supreme Court of the United States

MONROE B. LEVOY, Petitioner, *against* STYL-RITE OPTICAL CORPORATION	OCTOBER TERM 1950
MONROE B. LEVOY, Petitioner, *against* IDEAL OPTICAL CO., INC.	No. ———

BRIEF IN SUPPORT OF WRIT OF CERTIORARI

Statement

The annexed petition states the jurisdiction of the Court, the questions presented, the statute involved, the specification of errors and references to the opinion below. At least two of the questions presented we consider of general interest for determination.

The primary importance that attaches to this application, we submit, is the need for a definition of the degree of talent in designing necessary to constitute invention for qualification under Section 73 of Title 35 of U. S. C. A.

We believe it is generally recognized by the bar that Title 35, Section 73, of the U. S. C. A. has become practically a dead-letter because of the progressive raising of the standard of talent required by decisions of the lower courts. So far as we can learn, the last time the Second Circuit Court of Appeals held a design patent valid and infringed was in 1926 (*Franklin Knitting Mills,*

Inc. v. *Gropper Knitting Mills, Inc.,* 15 Fed. 2d 375; cert. den. 273 U. S. 761). We think this present case to be an instance which should be reviewed, to advise the public whether the "divine flash" test (R. 800) is a proper one in so ephemeral a field as commercial designs.

Of general interest, too, is the question whether elements in diverse earlier patents, among themselves unrelated to each other, and presenting no comparable beauty in themselves, can be counted as prior art against a later patent which embodies them, among others, in a pleasing and beautiful combination.

Summary of Argument

1. The frame invented by the petitioner displayed inventive talent sufficient to qualify the design for protection under the statute.

2. The existence in prior patents of elements, of no comparable beauty in themselves, cannot be counted as prior art against the pleasing integrated design of petitioner in which those elements constituted a part.

3. An earlier design of the same inventor upon which a patent was co-pending did not constitute prior art.

4. A design is to be judged subjectively and its conformity to the dictates of the cosmetic art should have been considered in deciding whether it was "new, original, and ornamental".

5. The petitioner's patent was not lacking in invention.

Argument

1. Mr. Justice Douglas has recently (*Great Atlantic & Pacific Tea Co.* v. *Supermarket Equipment Corporation,* decided December 4, 1950, Vol. 95, No. 3 of L. Ed. advance

sheets, December 18, 1950) drawn attention to the fact that the authority of Congress to legislate upon patents depends upon the grant by Section 8 of Article 1 of the Constitution. There the power is given to issue patents "to promote the progress of science and useful arts". The enactment of Section 73 could not conceivably have been in the interest of promoting the progress of science. It must have been intended, if Congress was not to exceed its powers, to promote the "useful arts".

A design in the "useful arts" is a matter of short life. By its nature it presents an appeal to the eye. It is not a machine or device. And the public demands novelty. Although presenting solely an *attractive appearance,* it cannot come under the heading of a work of art. "Genius" or a "divine flash" is the mark of a great artist. Must it apply to designers of silver spoons or eye-glass frames? Was the statute intended to protect Cellini's silver statuettes or rather objects designed for commercial taste and made and sold by the great gross?

A glance at such cases as *Whitney Mfg. Co.* v. *Alvin Silver Co.* (283 Fed. 75) will show what the standard was thirty years ago. The simple designs on page 76 show little evidence of genius, we submit. The general art was recognized as old; the "bevels, panels and beading" were old; but no prior art "produced a handle like this, both as to ornamentation and contour or configuration" (Hough, J., at p. 80).

In the case at bar, it is held against the petitioner that "the general notion of beautifying plastic frames was old in 1946" (R. 261). The "general idea" was "already old" (R. 262). The "Jeweled Spec" frame was close; but that was petitioner's own invention (see 10, *infra*). The "Classic" used paint for contrast instead of raised metal and "the contrasting portion of the eye-pieces was carried to the bridge-piece" (R. 262, fol. 789), thus missing the entire appeal of petitioner's design. And

so, each prior patent is referred to, only to show in the end its failure to anticipate petitioner's integrated, beautiful and successful frame.

But the petitioner is nevertheless relegated to the class of a "highly skilled craftsman" who is the "forgotten man of the patent system" (R. 267, fol. 801). The question urged is whether this should be so in considering design patents. Should not the statute be construed so as to be of practical value or, perhaps, pronounced unconstitutional as in furtherance of the *fine* arts rather than of the "*useful* arts"?

2. The District Court makes no attempt in his opinion to identify the design before him in appearance with early patented designs. The latter employed one or other elements of the petitioner's design as mechanical features; but his product went beyond with purpose born of experiment and presented a novel, beautiful and attractive aspect. (See Findings 6 to 10 inclusive R. 269-70; the "Jeweled Spec" will be treated separately below.) This building of a prior art from old elements, unrelated, was we submit, error. *Ashley* v. *Weeks-Neuman Co.*, 220 Fed. 899, 901.

3. The only prior design that approached the one at bar was "Jeweled Spec"; but it differed in that the idea of a spacing of the lustrous metal on the frame so as to leave the part near the nose free—an essential of the design in suit—was absent. So was the gold sleeve (R. 261, fols. 782-3). It was counted as prior art.

This was error. The first sale of Jeweled Spec was March 18, 1946 (R. 95). The application for a patent on it was filed March 29, 1946. The application was copending with that for the design in suit which was filed May 27, 1947. The petitioners were the same, the inventors the same, this plaintiff (R. 245, 248). The Jeweled

Spec could therefore not be prior art. *General Talking Pictures Corp.* v. *Western Electric Co., Inc.,* 304 U. S. 175, 82 L. Ed. 1273, 58 S. C. 849, especially at page 183 of 304 U. S.

4. The Court aparently disregarded the cosmetic appeal which flowed as a secondary attribute from the spacing and shaping of the frame. It was the design that presented this aspect. It brought itself literally within the classification of "useful arts". Whether this element might be considered was apparently raised by Mr. Justice Bradley at page 450 of *New York Belting and Packing Co.* v. *New Jersey Car Spring Co.,* 137 U. S. 445, 34 L. Ed. 741. Decision was, however, deferred until the question should become necessary to decide.

As an element of "useful arts", we would urge that it be considered.

5. All elements which validate a design patent were, we submit, present: A novel beauty; the pleasing combination which was not anticipated; a useful object that invited acceptance; an extraordinary commercial success; and immediate pirating. What swayed the Court in declaring the patent invalid was the finding of a lack of invention by absence of inventive talent and the presence of prior art. We submit the finding was erroneous.

CONCLUSION

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Eugene L. Bondy,
Attorney for Petitioner.

Office - Supreme Court, U. S.
FILED
MAR 5 1951
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1950

No. 570

MONROE B. LEVOY,

Petitioner,

against

STYL-RITE OPTICAL CORPORATION,

Respondent.

MONROE B. LEVOY,

Petitioner,

against

IDEAL OPTICAL CO., INC.,

Respondent.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

IRVING F. GOODFRIEND,
Attorney for Respondent,
60 East 42nd Street,
New York 17, New York.

307 BAR PRESS INC., 54 LAFAYETTE ST., NEW YORK 13 — WA. 5-3432-3.

INDEX

	PAGE
STATEMENT	1
ARGUMENT	2
In Reply to Petitioner's Reason 1 for granting the Writ	3
In Reply to Petitioner's Reason 2 for Granting the Writ	5
In Reply to Petitioner's Reason 3 for Granting the Writ	7
CONCLUSION	8

Cases Cited

General Talking Pictures Corp. v. Western Electric Co., Inc., 304 U. S. 175, 82 L. Ed. 1273, 58 S. C. 840 (cited by Petitioner)	5, 6
Goodyear Tire and Rubber Co. v. Ray-O-Vac Co., 321 U. S. 275, 88 L. Ed. 721, 64 S. C. 593	4
Leeds and Catlin Co. v. Victor Talking Machine Co., 213 U. S. 301, 53 L. Ed. 805, 29 S. C. 495	4
New York Belting and Packing Co. v. New Jersey Car Spring Co., 137 U. S. 445, 84 L. Ed. 74 (cited by Petitioner)	6
Republic of Peru, ex Parte, 318 U. S. 578, 87 L. Ed. 1014, 63 S. C. 793	2
Universal Oil Prod. Co. v. Globe Oil and Ref. Co., 322 U. S. 471, 88 L. Ed. 1399, 64 S. C. 1110	4

Statutes Cited

28 U. S. C. Rules, Rule 38 (2) Supreme Court Rules	2
28 U. S. C. Rules, Rule 38 (5) Supreme Court Rules	2
28 U. S. C. 1254	1
35 U. S. C. 73	3, 7

Supreme Court of the United States

October Term, 1950

No. 570

MONROE B. LEVOY,

Petitioner,

against

STYL-RITE OPTICAL CORPORATION,

Respondent.

MONROE B. LEVOY,

Petitioner,

against

IDEAL OPTICAL CO., INC.,

Respondent.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement

Petitioner seeks to review the decision of the Court of Appeals for the Second Circuit in a case in which he was the plaintiff and which decision held invalid Pat. No. Des. 147,368 granted to him for a spectacle frame.

Review by this Court is sought under paragraph (1), Section 1254 of Title 28, U. S. C., June 25, 1948, which consolidated Sections 346 and 347 of Title 28, U. S. C., 1940 Ed. Existing law is preserved by this revised section.

Rule 38 (2), Supreme Court Rules, provides that "only the questions specifically brought forward by the petitioner * * * will be considered."

Petitioner specifies three reasons on page 6 of his petition for granting this writ of certiorari. This brief, therefore, will be directed solely to establishing that none of these reasons are sufficient to move this Court's discretion to grant the petition.

Argument

Rule 38 (5), Supreme Court Rules, Title 28, Rules, points out that the review here sought is not a matter of right but solely within the sound judicial discretion of this Court.

No consideration here will be given to the four questions which are alleged on page 2 of the petition to be presented for review by this Court unless they relate to the three reasons specified by petitioner to warrant the grant of the writ.

To the same extent, no reply will be made to the five alleged errors committed by the Court of Appeals (p. 5, Petition).

The purpose of the statutes affecting certiorari was to curtail the Supreme Court's obligatory jurisdiction by substituting for the appeal as of right, discretionary review by certiorari in many classes of cases. *Ex parte Republic of Peru,* 318 U. S. 578, 87 L. Ed. 1014, 63 S. C. 793.

Review by certiorari by this Court has been sparingly exercised and then only in cases of peculiar gravity, which is not found here. This is a simple design patent, which has been held invalid by both the District and Circuit Courts.

In Reply to Petitioner's Reason 1 (Petition, p. 6) for granting the writ

It is contended that the decision of the Court of Appeals by its construction of Section 73, Title 35, U. S. C. (which statute is quoted on page 3 of the petition), nullifies the effect of that statute.

In the consideration of this petition, it should be noted that by Section 73, Title 35, in essence, Congress provided that a design patent was to be granted only to one who had *invented* a new, original and ornamental design. If there was no invention, a patent was not to be granted.

This statute further provided that the design should not have been described in a publication more than one year prior to the application for patent or should not have been publicly used or sold in this country for more than one year prior to the application for patent.

Thus, the particular statute sets up two conditions precedent for the grant of a design patent, first, there must be invention, and second, the design shall not have been described in a publication more than one year prior to the application for patent or on sale in this country more than one year prior to the application. The first condition that there must be invention should not be confused with the second condition that the design is not anticipated by publication or use.

Both the District Court (Opinion, Record, p. 267, fol. 800) and the Court of Appeals (which apparently found the District Court's opinion so clear and convincing that it adopted it in toto, Record, p. 285) found that invention was wanting.

Lack of invention could have been found, if the Court so chose and good reason for this appeared, without resort to the prior art although both the District Court and the Court of Appeals found that each element in the design patent in suit was known to designers in the field in almost similar surroundings so that petitioner was not an inventor.

At any event, the Courts below found without doubt that the patentee had not invented a new, original and ornamental design.

The Supreme Court ordinarily accepts the concurrent conclusion of the District Court and Court of Appeals that a patent is invalid. *Universal Oil Prod. Co.* v. *Globe Oil and Ref. Co.*, 322 U. S. 471, 88 L. Ed. 1399, 64 Sup. Ct. 1110.

Want of invention is primarily a question of fact which will not be revised by this Court on certiorari or set aside. *Leeds and Catlin Co.* v. *Victor Talking Mach. Co.*, 213 U. S. 301, 53 L. Ed. 805; 29 Sup. Ct. 495; *Goodyear Tire and Rubber Co.* v. *Ray-O-Vac Co.*, 321 U. S. 275, 88 L. Ed. 721, 64 Sup. Ct. 593.

Therefore, petitioner's first reason for granting the writ must fall because both Courts properly applied the statute by finding that the patentee was not an inventor.

It is respectfully submitted that finding a patent invalid for want of invention is not a nullification of the statute but conversely applies the strict congressional requirement that invention must be found before a design patent is granted.

To sum up, even though a design is new, original and ornamental, it does not necessarily follow that a design patent is granted as a matter of right. Rather, the design must have that further or additional quality which removes it from the routineer or skilled craftsman into the realm of the inventor.

Failure to find invention does not nullify the design patent statute but gives life to it.

Whether or not the spectacle frame of the patent in suit involved inventive talent, a matter in which it is urged the Court of Appeals erred by Specification of Error 1, is a matter of fact concurred in by the two Courts below, which is not to be disturbed by granting the writ.

Certiorari is not granted because of an error of fact but only for some other compelling reason.

In Reply to Petitioner's Reason 2 (Petition, p. 6) for granting the writ

It is contended that "the decision of the Court of Appeals is in conflict with applicable decisions of this Court."

The decision of the Appellate Court is a per curiam decision affirming without comment the decision of the District Court on the opinion of the District Judge. In other words, the Appellate Court must have believed that nothing could be added to the opinion of the District Court.

Apparently, petitioner believes that the decision of the District Court and that of the Court of Appeals is in conflict with this Court's decision in *General Talking Pictures Corp.* v. *Western Electric Co., Inc.*, 304 U. S. 175, 82 L. Ed. 1273, 58 S. C. 840 (cited on page 11 of petitioner's brief).

This is not so because that case holds that a patentee may obtain a valid patent for an invention which is a continuation of or a division of an earlier filed pending application.

Here, the patent in suit (Exh. 1, Record, p. 244) was not a division of the Jeweled Specs Patent (Exh. J, Record, p. 249) nor was it a continuation thereof. As a matter of fact, no common subject matter is found in these two except that each is for a spectacle frame. The frames are of different shape and the element of design is different.

Nor is there any element of design common to the patent in suit, Exhibit 1, and the earlier filed patent for the Jeweled Specs, Exhibit J. The former had a contrasting design appearance instead of the jewels of the latter.

As an inspection of these two patents conclusively establishes, which the Courts below found to be a fact,

the plastic frame of the former is entirely different from the plastic frame of the Jeweled Specs Patent, Exhibit J.

A further inspection of the record shows that the frame of the Jeweled Specs which was sold and described in a printed publication more than one year prior to the application for the patent in suit (Record, p. 246, Exh. F) is completely different from the frame of the earlier co-pending design patent for Jeweled Specs (Record, p. 249, Exh. J) but is exactly the same as the frame of the patent in suit.

At the trial, petitioner conceded that the only difference between the spectacle frame of the patent in suit and the frames of the Jeweled Specs of the prior publication and of the prior public sale, resided in the substitution of a contrast for the jewels, the plastic frame of all three being exactly the same.

In view of the showing that a contrast was old in the Classic publication (Record, p. 252, Exh. L), the District Court and the Court of Appeals did not commit substantial error in additionally holding that the patent in suit was invalid in view of both the Jeweled Specs and the Classic publications.

This was a question of fact that is not contrary to the rule of the *General Talking Pictures Corp.* case, which does not apply and therefore properly was not considered by the Courts below, although cited by petitioner in the Court of Appeals.

The District Court and by reference, the Court of Appeals, contrary to petitioner's assertion as a matter of fact, did consider the cosmetic appeal alleged to flow from the spacing and shaping of the spectacle frame of the patent in suit (Record, p. 265). The District Court below found that such spacing and shaping added nothing to the design (Record, p. 265, particularly note 7). Surely, therefore, there is no conflict with *New York Belting and Packing Co.* v. *New Jersey Car Spring Co.*, 137 U. S. 445, 34 L. Ed. 741, cited on page 11 of the petition.

There is, therefore, no ground for granting this petition under Reason 2 since the decisions of the Courts below are not in conflict with any ruling of the Supreme Court.

In Reply to Petitioner's Reason 3 (Petition, p. 6) for granting the writ

It is apparently contended that the Court of Appeals has made it deceptively appear that 35 U. S. C. 73 offers protection for invention when, as a matter of fact, it does not. It is respectfully submitted that this is an unusual reason for granting the writ and makes it appear that the Court of Appeals by its decision is guilty of a deception on members of the public, namely, inventors.

There can be no denial that the design patent statute properly protects an inventor. It does not, nor should it, protect a routineer or for that matter, a highly skilled craftsman. If anyone below the status of an inventor should receive a monopoly, that is a matter for Congress and not for the Courts.

The law should be taken by the Courts as the Congress passed it and not as one member of the public, here, the petitioner, for his own benefit, so earnestly desires it to be construed.

Neither the statute nor the decisions of the Courts below are deceptive. The statute and these Courts by their decisions, have unmistakenly provided that a design patent should be granted only to an inventor and not to anyone else. That the Courts below found petitioner invented nothing is reason only for his disappointment that the lower Courts decided he was only a routineer or skilled craftsman and not one for granting this petition for writ of certiorari.

Conclusion

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should not be granted.

IRVING F. GOODFRIEND,
Attorney for Respondent,
60 East 42nd Street,
New York 17, New York.